UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/38
24 December 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 8 (a) of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38

CONTENTS

		Paragraphs	Page
Introduction		1 - 2	4
I.	MANDATE AND METHODS OF WORK	3	4
II.	ACTIVITIES OF THE SPECIAL RAPPORTEUR	4 - 6	5
III.	INFORMATION REVIEWED BY THE SPECIAL RAPPORTEUR WITH RESPECT TO VARIOUS COUNTRIES	7 - 219	5
	Afghanistan	9 - 10	6
	Albania	11	6
	Algeria	12 - 18	6
	Argentina	19	7
	Armenia	20 - 21	7
	Austria	22	8
	Azerbaijan	23	8
	Bahrain	24 - 25	8
	Bhutan	26	8
	Bolivia	27 - 28	8
	Brazil	29 - 33	8
	Bulgaria	34 - 36	9
	Burundi	37	10
	Cameroon	38 - 39	10

CONTENTS

	Paragraphs	Page
Chad	40 - 45	10
Chile	46 - 48	11
China	49 - 50	12
Colombia	51 - 82	12
Cuba	83 - 84	18
Cyprus	85	18
Democratic Republic of the Congo	86	18
Djibouti	87	18
Ecuador	88	19
Egypt	89 - 93	19
Equatorial Guinea	94 - 95	20
Ethiopia	96 - 97	20
Georgia	98 - 101	21
Germany	102 - 104	21
Greece	105	22
Guatemala	106	22
Haiti	107 - 108	22
Honduras	109	22
Hungary	110	23
India	111 - 113	23
Indonesia	114 - 117	23
Iran (Islamic Republic of)	118 - 119	24
Iraq	120	24
Israel	121 - 123	24
Kenya	124 - 128	25
Kuwait	129	26
Malaysia	130	26
Maldives	131	27
Mauritania	132	27
Mexico	133 - 134	27
Myanmar	135 - 141	27
Namibia	142	29
Nepal	143 - 146	29
Niger	147	29
Nigeria	148	29
Pakistan	149 - 153	30
Peru	154 - 157	31
Republic of Korea	158 - 160	32
Romania	161 - 162	33
Russian Federation	163 - 170	33
Rwanda	171	35
Senegal	172 - 173	35
Spain	174 - 175	35
Sri Lanka	176	36
Sudan	177 - 180	36
Swaziland	181	37
Sweden	182	37
Switzerland	183 - 184	37

CONTENTS (continued)

	Paragraphs	Page
Syrian Arab Republic	185	37
Tunisia	186	37
Turkey	187 - 193	38
Ukraine	194 - 195	39
United Kingdom of Great Britain and Northern Ireland	196	39
United Republic of Tanzania	197	39
United States of America	198 - 203	40
Venezuela	204 - 206	41
Yemen	207 - 213	41
Yugoslavia	214 - 217	43
Zambia	218	44
Other communications: information transmitted to the Palestinian Authority	219	44
IV. CONCLUSIONS AND RECOMMENDATIONS	220 - 234	44

Introduction

1. The mandate of the Special Rapporteur on torture, assigned since April 1993 to Mr. Nigel S. Rodley (United Kingdom), was renewed for three more years by Commission resolution 1995/37 B. In conformity with this resolution and with resolution 1997/38, the Special Rapporteur hereby presents his fifth report to the Commission. Chapter I deals with a number of aspects pertaining to the mandate and methods of work. Chapter II summarizes his activities during 1997. Chapter III consists mainly of a review of the information transmitted by the Special Rapporteur to Governments, as well as the replies received, from 15 December 1996 to 5 December 1997. Chapter IV contains conclusions and recommendations.

2. In addition to the above-mentioned resolutions, several other resolutions adopted or reaffirmed by the Commission on Human Rights at its fifty-third session are also pertinent within the framework of the mandate of the Special Rapporteur and have been taken into consideration in examining and analysing the information brought to his attention. These resolutions are, in particular: decision 1997/106 reaffirming resolution 1996/32, "Human rights in the administration of justice, particularly with respect to children and juveniles in detention"; resolution 1997/16, "Rights of persons belonging to national or ethnic, religious and linguistic minorities"; resolution 1997/27, "Right to freedom of opinion and expression"; resolution 1997/28, "Hostage-taking"; resolution 1997/37, "Human rights and thematic procedures"; resolution 1997/39, "Internally displaced persons"; resolution 1997/42, "Human rights and terrorism"; resolution 1997/43, "Integrating the human rights of women throughout the United Nations system"; resolution 1997/44, "The elimination of violence against women"; resolution 1997/46, "Advisory services, technical cooperation and the Voluntary Fund for Technical Cooperation in the Field of Human Rights"; resolution 1997/56, "Cooperation with representatives of the United Nations human rights bodies"; resolution 1997/69, "Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action"; resolution 1997/75, "Human rights and mass exoduses"; resolution 1997/78, "Rights of the Child".

I. MANDATE AND METHODS OF WORK

3. No mandate-related issues have arisen during the year under review, nor have there been any new developments in the methods of work of the Special Rapporteur. Nevertheless, the Special Rapporteur wishes to assure the Commission on Human Rights that he has continued its practice of cooperating with the holders of other Commission mandates to avoid duplication of activity in respect of country-specific initiatives. Thus, he has sent urgent appeals or transmitted information alleging violations within his mandate to Governments, or sought joint missions to Member States, in conjunction with the following mechanisms: the Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention and the Special Rapporteurs on extrajudicial, summary or arbitrary executions; independence of judges and lawyers; freedom of opinion and expression; elimination of violence against women; Afghanistan; the Islamic Republic of Iran; Myanmar; the Sudan; the Democratic Republic of the Congo; Rwanda; and Burundi.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

4. During the period under review the Special Rapporteur undertook a mission to Mexico (7-16 August 1997). The report of the visit may be found in addendum 2 to the present report. The Government of Turkey has invited the Special Rapporteur to visit the country in the last quarter of 1998, an initiative for which he is most grateful. Requests made this year for invitations to visit Algeria and Egypt in the coming year received a positive reaction in a first contact with the Permanent Missions of the two States. The Permanent Mission of Cameroon contacted the Special Rapporteur in respect of his outstanding request for an invitation to visit the country leading him to hope that progress could be made in this respect. The outstanding requests for invitations to visit China, India, Indonesia and Kenya remain without positive response.

5. The Special Rapporteur participated in the fourth meeting of special rapporteurs/representatives, experts and chairmen of working groups of the special procedures of the Commission on Human Rights and of the Advisory Services Programme which took place in Geneva from 20 to 23 May 1997. From 5 to 7 May he attended part of the sixth session of the Commission on Crime Prevention and Criminal Justice which took place in Vienna from 28 April to 8 May 1997.

6. He also attended a number of pertinent NGO meetings including an expert group meeting convened by REDRESS on the role of victims of crimes within the jurisdiction of the proposed International Criminal Court (Geneva, 15-16 March 1997); an Amnesty International meeting on universal jurisdiction (Netherlands, 9-11 May 1997); and an international conference on impunity organized by the International Institute for High Studies in the Criminal Sciences (Siracusa, Italy, 17-20 September 1997). The subject matter of these meetings contributed substantially to the recommendations that conclude the present report. He also participated in a panel of the annual meeting of the American Society of International Law (Washington D.C., 10-12 April 1997) examining the work of United Nations human rights protection machinery.

III. INFORMATION REVIEWED BY THE SPECIAL RAPPORTEUR WITH RESPECT TO VARIOUS COUNTRIES

7. During the period under review, the Special Rapporteur sent 48 letters to 45 Governments on behalf of 380 individuals and 24 groups involving about 655 persons. About 74 were known to be women and about 56 were known to be minors. The Special Rapporteur also transmitted 119 urgent appeals to 45 countries on behalf of some 563 individuals (at least 19 known to be women and 9 known to be minors), as well as 22 groups of persons (one involving about 780 children) with regard to whom fears that they might be subjected to torture had been expressed. Together with individual cases the Special Rapporteur also transmitted to Governments allegations of a more general nature regarding torture practices, whenever these allegations were brought to his attention. In addition, 28 countries provided the Special Rapporteur with replies on some 345 cases submitted during the current year, whereas 19 did so with respect to some 290 cases submitted in previous years.

8. This chapter contains, on a country-by-country basis, summaries of the general allegations transmitted by letter to Governments and the latter's replies, as well as a numerical breakdown of the individual cases and urgent appeals transmitted by the Special Rapporteur and the replies received from Governments. Information about follow-up action to reports and recommendations made after previous years' visits to countries are also included. Finally, observations by the Special Rapporteur have also been included where applicable. Information about individual cases transmitted and replies received are contained in addendum 1 to this report.

Afghanistan

9. The Special Rapporteur sent two urgent appeals, one in conjunction with the Special Rapporteur on the situation of human rights in Afghanistan concerning the application of amputation as a form of punishment, and the other on behalf of one individual in conjunction with the Special Rapporteurs on the situation of human rights in Afghanistan and on extrajudicial, summary or arbitrary executions.

Observations

10. In the light of the information contained in the interim report of the Special Rapporteur on the situation of human rights in Afghanistan (A/42/493) and in the addendum to the present report (E/CN.4/1998/38/Add.1, paras. 1-2), the Special Rapporteur is concerned at the incidence of torture or other cruel, inhuman or degrading treatment or punishment, in particular extreme forms of corporal punishment often specifically inflicted on women determined to have been involved in offences of a moral nature.

Albania

11. The Special Rapporteur transmitted to the Government one urgent appeal on behalf of persons arrested during demonstrations and received one reply from the Government.

Algeria

12. By letter of 17 November 1997, the Special Rapporteur informed the Government that he had received reports that torture and ill-treatment occurred frequently during periods of incommunicado detention in police and gendarmerie stations, military security centres and secret detention centres. Incommunicado or garde à vue detention could reportedly be extended to 12 days, since the issuance of decree No. 92-03 of 30 September 1992.

13. The main purpose of torture and ill-treatment was said to be the extraction of information and the signing of confessions in the form of written statements (procès verbaux) during interrogation, but it was also said to have been used as a form of punishment. The information received suggested that persons suspected of having links with armed opposition groups were particularly vulnerable to torture.

14. Torture methods most commonly used by the security forces were said to include: "chiffon", whereby a detainee is tied to a bench and a cloth is

stuffed in his mouth after which large quantities of dirty water and chemicals are poured into his mouth; "chalumeau", whereby a torch is used for inflicting burns on the body; electric shocks to sensitive parts of the body; tying a rope around the penis and/or testicles or placing the genitals between drawers; beatings; burnings by cigarettes; insertion of objects or glue into the anus; and suspension. Information had also been received alleging that persons had been subjected to rape, pumping of salt water into the stomach - sometimes reportedly leading to death, boring of holes in limbs or breaking of them. Detainees were further said often to be blindfolded during prison transfers and sometimes also during interrogation and the initial period of detention.

15. Independent medical supervision during incommunicado detention, but also thereafter, had allegedly frequently been denied. If a medical examination took place, it was reportedly often carried out after a delay and by a Government-appointed doctor. Some detainees had reportedly died in detention as a result of torture.

16. Since 1992, the authorities had reportedly not carried out any official judicial investigations into allegations of torture and ill-treatment and preventive measures had allegedly not been taken. Confessions obtained under duress were said to have been used as evidence in court. Furthermore, no independent human rights or humanitarian organization was reportedly able to carry out private interviews with detainees in prison.

17. The Special Rapporteur also transmitted four individual cases. In addition, he sent an urgent appeal on behalf of one person, and received a reply from the Government. In his letter of 17 November 1997, the Special Rapporteur also requested the Government's agreement on the possibility of a visit to the country, in order to enable him to better fulfil his mandate.

Observations

18. In the light of the information before the Special Rapporteur and of preliminary contacts with the Permanent Mission, he has reason to hope that the Government will see fit to extend to him an invitation to visit the country in the coming year.

Argentina

19. The Special Rapporteur transmitted to the Government information received on the treatment to which a group of prisoners in the Persons on Charge Unit (Unidad de Encausados) of the city of Córdoba had allegedly been subjected.

Armenia

20. The Special Rapporteur transmitted 6 newly reported cases, some of them collective, concerning 11 individuals and a number of unnamed persons. He also retransmitted the cases sent by the Special Rapporteur in 1996 to which no reply had been received.

Observations

21. The Special Rapporteur considers the observations he made in his report last year (E/CN.4/1997/7, para. 23) remain pertinent.

Austria

22. The Government provided additional information concerning two cases which were transmitted and first replied to in 1996.

Azerbaijan

23. The Special Rapporteur transmitted to the Government two newly reported cases: one individual case and one collective case on behalf of two individuals and a group of unnamed persons. He also retransmitted one individual case already sent in 1996 but to which no reply had been received.

Bahrain

24. The Special Rapporteur transmitted one individual case and three urgent appeals. The Government replied to the urgent appeals.

Observations

25. The Special Rapporteur appreciates the Government's responses to his urgent appeals. He would welcome the Government's reaction to the observations he formulated in his report of last year (E/CN.4/1997/7, para. 29).

Bhutan

26. The Special Rapporteur transmitted three urgent appeals, all of which the Government replied to.

Bolivia

27. The Special Rapporteur sent an urgent appeal on behalf of one person, and the Government replied.

Observations

28. The Special Rapporteur notes the recommendation of the Human Rights Committee that the Government should institute investigations into human rights violations "to bring to justice the perpetrators and to provide proper compensation to the victims, particularly with respect to continuing occurrences of torture and ill-treatment by the police and security forces" (A/52/40, para. 218).

Brazil

29. On 26 May 1997 the Special Rapporteur advised the Government that he had received information that the forensic medicine services were subordinate to the security forces, which compromised the independence they ought to enjoy.

Moreover, under Brazilian law only a medical examination authorized by a police authority was valid in court. This meant that victims of possible acts of torture or ill-treatment would be reluctant to seek such authorization for fear of reprisals, thus making it difficult to obtain evidence.

30. The Brazilian Forensic Medicine Society and the Brazilian Society of Forensic Criminology Experts had apparently been seeking financial and administrative autonomy from the police since 1989 and had proposed legislative initiatives to this effect. The Government, however, was said not to have attached priority to this matter. To date, only in the State of Amapá had forensic services ceased to be subordinate to the police authorities and they now reported directly to a secretariat linked to the Governor's Office.

31. It was also reported that doctors had been asked to indicate the physical cause of death in autopsy forms but had not been instructed to include comments on the means which had provoked the death, nor had they been instructed about submitting the kind of information that might be relevant to a legal investigation. Therefore, important data were often lost.

32. The Special Rapporteur also received information that the police, both civil and military, and also the federal police, frequently resorted to torture in much of the country. Contributory factors were the lack of training and the impunity usually enjoyed by those responsible. Moreover, the legislature still had not adopted measures to criminalize torture. Although the lower house had approved the appropriate bill on 2 July 1996 it was still pending in the Senate.

33. The Special Rapporteur also transmitted to the Government information on three individual cases and one urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions.

Bulgaria

34. By letter of 11 July, the Special Rapporteur advised the Government that he had received information on what was alleged to be a substantial incidence of torture or other ill-treatment inflicted by members of the police against street children, especially those of Roma ethnicity. The ill-treatment, which was said to take place both at the time of arrest and during detention at police stations, was allegedly carried out to intimidate or to extract a "confession". The children so detained were reportedly sometimes picked up on suspicion of such crimes as theft, but might also be arrested as part of generalized "street sweeps". The abuse reported included beatings with fists, boots, electric shock batons, clubs, chains, rubber hosing, boxing gloves or a metal rod with a ball attached to its end (beech) and beatings on the soles of the feet, sometimes with electric batons (falaka). Detained children who were held at police stations were said frequently to be held without beds, blankets and sometimes without food or use of toilets. The parents of such detainees were reportedly rarely informed of their detention. Children were also reported to be sometimes held together in lock-ups with adult detainees.

35. The Special Rapporteur also informed the Government of newly received allegations concerning seven persons, two of them minors. In connection with a number of cases transmitted in 1996 on which replies had been received, the

Special Rapporteur sent to the Government the observations made by the source on the replies. In addition to that, the Special Rapporteur retransmitted the cases which had not been replied to.

Observations

36. The Special Rapporteur's observations of last year (E/CN.4/1997/7, para. 37) appear to remain pertinent.

Burundi

37. The Special Rapporteur transmitted to the Government four urgent appeals, including one in conjunction with the Special Rapporteur on the situation of human rights in Burundi.

Cameroon

38. The Special Rapporteur transmitted to the Government information on three individual cases and one case involving three persons and received a reply in each case. He also sent two urgent appeals, both collective.

Observations

39. The Special Rapporteur notes his outstanding request for an invitation to visit the country. Contacts with the Permanent Mission lead him to hope that progress may be made in this respect.

Chad

40. In a letter dated 26 May 1997, the Special Rapporteur informed the Government that he had received information that the torture of persons arrested for political reasons was a widespread practice throughout Chadian territory. One of the commonly used methods of torture reported is known as "arbatachar" which involves tying the victim's arms and legs behind his back, thus causing extreme pain, open wounds and, in some cases, gangrene. Another technique is to use two metal rulers or two pieces of iron held together with two elastic bands which the torturers fit onto the head of the victim, who is tied in the "arbatachar" position against a tree or a pole; they then beat in time on the metal rulers or pieces of iron several times for at least one hour using another piece of iron. Cases of prisoners stuffed into burlap sacks and thrown into the Logone river had also been reported.

41. Violence against women, including the rape of young girls, also seemed to be very widespread. The persons responsible seemed to be not only the security forces, but also armed opposition groups. Because of the social stigma attached to rape, the victims hardly dare to seek medical attention, much less speak out or file a complaint.

42. The reports also stated that persons suspected of belonging to the armed opposition were singled out for ill-treatment. In the majority of cases, they were allegedly tortured at the time of arrest or inside gendarmerie premises by soldiers and gendarmes trying to obtain information. Some prisoners were also said to be tortured in National Security Agency premises.

43. According to the information received, it was unusual for complaints to be filed because the victims were afraid of reprisals or considered that the persons who were guilty would never be brought to justice. In addition, the authorities allegedly did not take account of requests by judges in connection with investigations of human rights violations. For example, when orders were given by the public prosecutor for the interrogation of soldiers responsible for human rights violations, the gendarmes would refuse on the grounds that they could not interrogate their superiors. The authorities also made sure that jails and places of detention were beyond the prosecutors' control and set up obstacles to the prosecutors' work in this regard.

44. The Special Rapporteur has transmitted information to the Government on 13 cases, some of them collective, relating to 19 persons, as well as to a number of unidentified persons. He also transmitted an urgent appeal on behalf of eight persons.

Observations

45. The Special Rapporteur regrets the absence of a response from the Government, in the light of information indicating the probability that there is extensive resort to torture by the forces charged with keeping public order.

Chile

46. In a letter dated 22 September 1997 the Special Rapporteur, as a follow-up to the recommendations he had addressed to the Government after his visit to the country in 1995, requested the Government to provide information on the following matters:

(a) The follow-up given to the report by the Constitutional, Legislative and Judicial Committee of the Chamber of Deputies, which proposed eliminating the "arrest on suspicion" provision from the current Code of Criminal Procedure;

(b) The follow-up to the bill, shown to the Special Rapporteur during the course of his visit, reforming the Code of Criminal Procedure and the Penal Code with regard to detention and introducing rules to strengthen the protection of civic rights;

(c) The situation concerning the draft Code of Criminal Procedure and of the Organization Act relating to the Prosecution Service;

(d) The follow-up to the bill submitted by the Government to the Chamber of Deputies in 1996 in order specifically to characterize torture as an offence;

(e) Whether or not in the years 1996 to 1997 officers of the forces of law and order had been punished for offences relating to violation of the right to physical integrity of detained persons, and if so, details of these cases.

47. In the same letter the Special Rapporteur transmitted to the Government information on 12 alleged cases of torture. In addition, the Special Rapporteur sent an urgent appeal on behalf of four persons.

Observations

48. In the light of information suggesting that torture and ill-treatment continue to be resorted to by the police, it is a matter of concern that the Government has not been in a position to elaborate on developments, subsequent to its response of 10 September 1996 (see E/CN.4/1997/7, paras. 45-53) by way of follow-up to the recommendations he made in the report of his 1995 visit to the country (E/CN.4/1996/35/Add.2).

China

49. The Special Rapporteur transmitted 7 newly reported cases, some of them collective, concerning 11 individuals and a number of unnamed persons. He also retransmitted the cases sent by the Special Rapporteur in 1996, and a number of allegations transmitted in 1995 on which no reply had been received. The Special Rapporteur further made three urgent appeals on behalf of seven persons. The Government replied to two of the urgent appeals.

Observations

50. The Special Rapporteur appreciates the Government's replies in respect of the first two urgent appeals. He is also relieved at the later (November) release of Wei Jingsheng. He notes the absence of response in respect of other cases transmitted to the Government. In the light of continuing worrying allegations of torture and ill-treatment, particularly in Tibet, he again stresses his outstanding request for an invitation to visit the country.

Colombia

51. The Government sent information with regard to a case transmitted by the Special Rapporteur in 1996.

Follow-up to the recommendations made by the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions subsequent to their visit to Colombia in 1994

52. On 29 October 1996 the Special Rapporteurs reminded the Colombian Government of recommendations made after their visit to the country in October 1994 and requested information on measures taken to implement those recommendations, particularly in connection with certain aspects of the recommendations detailed in a questionnaire. On 8 January 1997 the Government replied to this request. During 1997 non-governmental sources provided the Rapporteurs with information relating to subjects covered by the recommendations and to the Government's comments.

53. The recommendations (see E/CN.4/1995/111), a summary of the Government's reply and a summary of the information received from non-governmental sources are given below. They were transmitted to the Government on 31 October 1997.

54. "The Special Rapporteurs call on the Government to fulfil its obligation under international law to conduct exhaustive and impartial investigations into all allegations of extrajudicial, summary or arbitrary executions and torture, to identify, prosecute and punish those responsible, grant adequate compensation to the victims or their families and take all appropriate measures to prevent the recurrence of such acts."

55. The Government indicated with regard to the obligation to compensate victims that Act No. 288 of 1996 established methods for compensating victims of violations by virtue of the provisions adopted by certain international bodies, specifically the Inter-American Commission on Human Rights and the Human Rights Committee. The Act established an obligational content specifically for the Government.

56. Non-governmental sources pointed out that, although Act No. 288 of 1996 marked a step forward in making domestic arrangements consistent with international instruments for the protection of human rights, it did not encompass the broader view of reparation for violations of human rights developed by international doctrine and case law and was confined solely to financial compensation, without any mechanisms which, for example, envisaged social redress, clearing of the names of the victims and fulfilment of the State's obligation to guarantee the rights to truth and justice. Similarly, Act No. 288 of 1996 limited the State's commitment to fulfilling only the Recommendations on Compensation made by the Inter-American Commission on Human Rights and by the United Nations Human Rights Committee and excluded any equally binding recommendations from other intergovernmental bodies for the protection of human rights, such as the International Labour Organization or the Committee against Torture.

57. As regards the civil justice system the Rapporteurs recommended, inter alia, the following: "As long as the Regional Justice System exists, the crimes falling under this jurisdiction should be clearly defined ... defendants before regional courts must enjoy full respect for their right to a fair trial. The severe restrictions currently in place, including those affecting the right to habeas corpus, ... should be eliminated."

58. With reference to the Regional Justice System the Government said that the Administration of Justice Act specifically mentions the period of operation of the Act, which should cease to apply no later than 30 June 1999. This Act originally contained provisions to limit the anonymity of witnesses and of the public prosecutor. Now the Constitutional Court had declared that it was impossible to eliminate these provisions on procedural grounds. Nevertheless, from all the criticisms, recommendations and suggestions made, it can be inferred that the tendency is to reduce the scope of the Regional Justice System, the principal factors for applying it being the danger posed by the accused and the seriousness of the offence. More and more restrictions have been placed on the anonymity of judges and witnesses.

59. Non-governmental sources indicated that, further to the decision by the Constitutional Court, the previous rules were still in force. This continued to make it easy for members of the police force to act as secret witnesses and accuse, in court, those whom they considered their enemies, who were usually nothing more than social activists.

60. The Rapporteurs recommended that "provision should be made for effective protection of persons providing testimony in proceedings involving human rights violations".

61. The Government pointed out that the Programme for the Protection of Prosecution Witnesses operated on a limited basis, as the requirements were rather strict and few people were willing to submit to them. Resources continued to be insufficient for the needs. The Government had made progress in implementing the Special Programme for the protection of officials and activists of political, trade union, social and human rights organizations and witnesses. This programme was run by the Special Human Rights Administrative Unit of the Ministry of the Interior.

62. Non-governmental sources pointed out that the Programme for the Protection of Prosecution Witnesses in cases of human rights violations had not produced particularly good results. On the few occasions it had been used the conditions were very strict, the greatest difficulty being to ensure complete separation of the protected person from his or her family. Moreover, witnesses lacked confidence in the conditions of protection, and understandable that victims of human rights violations were afraid of any State official. The rigidity of the Programme conflicted with the lack of confidence of potential protectees, to the detriment of their safety. The main problem with this type of programme was that it was designed for criminals who turned State's witness, rather than for victims of human rights violations. Victims were exposed to the possibility of being placed on a charge, since the function of the Prosecutor's Office was to investigate and accuse, so it was natural for victims not to feel confident about the body required to protect them. These programmes had very little coverage and their focus was debatable; there was a tendency to act on threats against the safety of individuals, but in the overwhelming majority of cases investigation into the causes of and those responsible for the threats was left aside.

63. With regard to the special programme for the protection of officials and activists of political, trade union and social organizations, non-governmental sources pointed out that the programme had been presented to non-governmental human rights organizations by the Government in March 1997. Since that date the safety conditions for human rights institutions and their members had been seriously deteriorating, with many cases of assassinations, disappearances, court proceedings in which human rights activities were criminalized, threats, exile and forced displacement. These acts contrasted with governmental policy since the middle of this year, as exemplified by Presidential Directive No. 011 of 16 July 1997 and the dialogue begun between human rights organizations and the Government through the Ministry of the Interior, the Ministry of Foreign Affairs and the Ministry of Defence, principally on the situation of human rights defenders.

64. Non-governmental sources also pointed out that Directive No. 011 recognized the legitimacy of the work of non-governmental human rights organizations, their contribution to democracy and the rule of law, and to preventing further violations, overcoming impunity and ensuring reparations for the victims. It ordered public servants to refrain from making insulting or injurious statements against members of these organizations and to give priority to petitions by human rights defenders. The non-governmental

organizations acknowledged the importance of this type of measure. Nonetheless, in the dialogue begun with the Government they had declared that these measures should be more far-reaching and more effective. Among the measures suggested were confronting and eradicating illegal paramilitary groups, dismissing those members of the public forces and other State organizations involved in serious human rights violations, and implementing strategies for prosecuting and punishing those responsible for threats and attacks against human rights defenders.

65. The Rapporteurs recommended, with regard to military justice, that a reform of the Code should include the following elements: (a) a clear distinction between those carrying out operational activities and members of the military judiciary, who should not form part of the normal chain of command; (b) reconstitution of the military tribunals with a corps of legally trained judges; (c) ensuring that investigation and prosecution officials were independent of the normal military hierarchy; (d) elimination of the principle of obedience to superior orders in connection with executions, torture and enforced disappearances; (e) involvement of the claimant for criminal indemnification (parte civil); and (f) explicitly excluding from military jurisdiction the crimes of execution, torture and enforced disappearance. Furthermore, the body deciding on conflicts of jurisdiction between the civil and military justice systems should be composed of independent judges.

66. The Government referred to its decision to present to Congress the reform of the Military Criminal Justice System beginning in March 1997. The Government had an official position with regard to the two most relevant points at issue: whether or not to limit the concept of service-related crimes, and whether or not to restrict the concept that obedience to superior orders conferred exemption from responsibility. In connection with the first matter, the Government had opted not to include definitions or regulatory details and to leave it to the discretion of the court to determine whether or not the acts were connected with active service. As for obedience to superior orders, this could only be invoked when the act was the result of a legitimate order and did not infringe fundamental rights.

67. Other important advances had also been achieved such as a clear distinction drawn between those who carried out operational activities and members of the military judiciary, who should not form part of the normal chain of command; the technical training of investigation and trial personnel; the introduction of the indictment system; the involvement of the claimant for indemnification (parte civil) in legal proceedings, and the introduction of a chapter in which the most relevant infringements of international humanitarian law were characterized as offences.

68. Non-governmental sources pointed out that the draft Military Criminal Code submitted by the Government reproduced the content of article 221 of the Constitution and, in connection with serious violations of human rights, excluded application in the military courts. As to obedience to superior orders, it established that an order should be carried out with the due legal formalities and by a competent authority. Nevertheless, it was not explicit about the duty not to carry out express orders which involved violations of human rights. Action by the claimant for indemnification (parte civil) was

extremely limited within legal proceedings, for under article 301 of the draft that party could not oppose rulings and decisions unless they related to claims for compensation.

69. The same sources pointed out that the conditions in which the draft was presented had been substantially modified by the decision of the Constitutional Court on 5 August 1997, which had ruled on a claim of unconstitutionality concerning various articles of the Military Criminal Code. The decision fixed three rules for the application of military criminal law. The first was that such application was restrictive, which meant that it could apply only in crimes committed by members of the public security forces on active service and in connection with their duties. The act had to be part of the lawful activities of the police service or armed forces; therefore, if the intention of the agent was criminal from the outset the case fell to the ordinary courts. The second rule was that certain crimes did not and could not constitute service-related acts and were not covered by military law, for example, crimes against humanity. In those circumstances the case should be assigned to the ordinary courts in view of the total incompatibility between the crime and the tasks of the public security forces under the Constitution. Thirdly, the evidence presented in legal proceedings should fully demonstrate the active service relationship. This meant that, in situations in which there was doubt about the jurisdiction competent to rule on a particular case, the decision should be in favour of the ordinary courts, since it had not been possible to fully demonstrate that the case constituted an exception.

70. The rules fixed by the Constitutional Court were binding on the country's other jurisdictional authorities. Non-governmental sources nonetheless showed concern about their application in this instance. This was due to the fact that, since the ruling, the Government had not made the necessary arrangements for referral to the Attorney-General's Office or to the ordinary courts of cases currently under the military criminal justice system that did not fulfil the conditions for a hearing in the military courts, in conformity with the Constitutional Court's ruling.

71. The Special Rapporteurs recommended the establishment of a mechanism which could contribute to providing justice for past offences.

72. The Government pointed out that it had actively participated in the friendly settlements being reached within the framework of the Inter-American Commission, also mentioning some of the headway made in the Trujillo, Uvos, Caloto and Villatina cases.

73. Non-governmental sources recognized the importance of the investigative commissions mechanism. They noted, however, that progress was minimal in clearing up cases, punishing the guilty and securing social redress for the victims of violence. None of the judicial investigations had been completed.

74. The Rapporteurs recommended taking effective priority measures to disarm and dismantle paramilitary groups.

75. The Government indicated that the activity of private vigilante groups had been rejected by the highest governmental authorities. The Attorney-General's Office had described the fight against impunity for acts

committed by these groups as one of its priorities. The Human Rights Unit was currently engaged in 29 investigations in that connection and had issued arrest warrants for members of those groups.

76. Non-governmental sources said that, since the beginning of 1997, the actions of paramilitary groups had spread throughout the national territory. In carrying out their actions the groups had committed serious violations consisting of executions, forced disappearances and torture of a dreadfully cruel nature on all kinds of victims. They had also caused the displacement of entire populations. In addition, as was typical since they had emerged, they had carried out their actions in highly militarized zones and no clashes had occurred with public security forces. In some cases joint actions with the army had even been reported.

77. These same sources note that the Government's attitude towards these groups was permissive, inasmuch as they had not adopted policies to combat them. Moreover, a tendency was observed to actually legitimize them by creating and encouraging the so-called "Convivir" (coexistence) groups. These were organizations of private individuals called on to provide special vigilante and private security services, with official authorization to use weapons meant for the exclusive use of the public security forces. Although the law was not clear in determining the activities of these organizations, they were officially pictured as engaged in intelligence work in armed conflict zones, helping the army to combat the guerrillas. This meant that tasks which were rightly the work of the military were being delegated to private individuals, which was contrary to the provisions of the Constitution, according to which these tasks could only be carried out by the military and the police forces. An application of unconstitutionality against the decree creating these groups was currently under examination by the Constitutional Court.

78. During 1997 the activity of these groups has been stepped up in the municipalities of Yondó, Dadeiba, Remedios and Santa Rosa de Osos, in the Department of Antioquia; Carmen de Bolívar, Río Viejo and Tiquisio Nuevo, in the Department of Bolívar; Milán, in the Department of Caquetá; La Jagua de Ibirico, El Copey and La Paz, in the Department of César; Riosucio, in the Department of Chocó; Abrego, in the Department of Norte de Santander, and Mapiripán, in the Department of Meta.

79. The Special Rapporteurs recommended the adoption of measures to protect those at risk of "social cleansing" killings, in particular street children.

80. The Government pointed out that the President's Social Solidarity Network was conducting a special programme to promote the rights and the protection of the homeless in 12 cities. This was currently being worked on in an inter-agency committee trying to strengthen the "Care for street children" programme.

81. Non-governmental sources said that, between October 1995 and September 1996, 314 people had died as a consequence of violence against the socially marginalized. In almost 40 per cent of the cases those responsible for the actions were unknown. Among the other cases, the paramilitary groups were mainly responsible, accounting for 57 per cent of cases. Moreover, the

responsibility for 15 of 24 collective executions of marginalized people was attributed to them. Two and a half per cent of the cases were attributed to guerrillas and 1.3 per cent to members of the public security forces. Sixty per cent of these executions occurred in the country's six main cities (Medellín, Barranquilla, Bogotá, Cartagena, Cali and Cúcuta).

Observations

82. The Special Rapporteur appreciates the Government's detailed response by way of follow-up to the joint report of the Special Rapporteurs. He hopes that the Constitutional Court's ruling that crimes against humanity could not be service related and thus were amenable to civil and not military jurisdiction would result in the transfer to the civilian justice system of all cases of torture presently before the military justice system. He also notes that the Human Rights Committee has deplored "the fact that gross and massive human rights violations continue to occur in Colombia... [in particular] torture and other degrading treatment" (A/52/40, para. 278). While information has started reaching him from the Bogotá office of the High Commissioner for Human Rights, the Special Rapporteur believes that over the coming period, it will be desirable to review procedures for the exchange of information. He believes the work of this office could be enhanced by working in cooperation with a Special Rapporteur on the human rights situation in Colombia.

Cuba

83. The Special Rapporteur transmitted three new cases to the Government. In addition, he again transmitted those already sent in 1995 and 1996, on which no reply had yet been received.

Observations

84. In the light of the conclusions and recommendations of the Committee against Torture, as well as the information referred to in the addendum to the present report (E/CN.4/1998/38/Add.1, paras. 82-84), the Special Rapporteur can only reaffirm his observations of last year (E/CN.4/1997/7, para. 68).

Cyprus

85. The Special Rapporteur sent one new case to which the Government replied. The Government also replied to one case transmitted in 1996.

Democratic Republic of the Congo

86. The Special Rapporteur addressed two urgent appeals to the Government in conjunction with the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo. One was on behalf of three persons, the other on behalf of ten persons.

Djibouti

87. The Special Rapporteur transmitted to the Government an urgent appeal on behalf of five persons.

Ecuador

88. The Special Rapporteur sent an urgent appeal on behalf of a group of prisoners. In addition, he received a reply from the Government on cases transmitted in 1995.

Egypt

89. By letter dated 28 April 1997, the Special Rapporteur advised the Government that he had received information indicating that torture of persons detained for political reasons continued to take place on a systematic basis. In addition, the use of torture against persons detained in ordinary criminal cases was said to occur with frequency. Torture was reported to be carried out in the State Security Investigations Department (SSI) headquarters in Lazoghly Square, SSI branches throughout the country, police stations and Firaq al-Amn (security brigades), where detainees were said to be held incommunicado. The methods of torture reported include the administration of electric shocks, beatings, suspension by the wrists or ankles, burning the body with cigarettes, threats of rape or sexual abuse to the detainee or to female relatives in his presence.

90. The Special Rapporteur also advised the Government that he had continued to receive information according to which conditions of a number of prisons were said to be extremely poor. On the whole, the prison system was said to be characterized by the use of torture and other ill-treatment as a means of discipline and punishment, the prevalence of contagious diseases such as tuberculosis, lack of adequate medical care for prisoners and bans on visits from relatives and lawyers. In this connection, particular allegations had been received in respect of the High Security Prison (Al-Aqrab or the Scorpion). Prisoners were said to receive insufficient quantities of food and the food received was said typically to be served from filthy buckets and often infested with insects. Tuberculosis was reported to be widespread inside the prison. Prisoners requiring hospitalization or specialized tests such as x-rays were said to be denied access to such medical care, even upon the recommendation of the prison doctor. According to a decision taken by the Minister of the Interior on 20 December 1993, the prison was said to be considered "closed", meaning that visits of families and relatives are banned. The Administrative Court was said to have issued five rulings cancelling the closing decision, none of which were reportedly complied with by the Ministry of the Interior. Torture and ill-treatment of prisoners was reportedly widespread at the High Security Prison. Inmates were said to undergo "reception parties" at Fayyom Prison upon entering (see E/CN.4/1997/7, para. 71).

91. By the same letter the Special Rapporteur communicated to the Government nine newly reported cases, some of them collective, on behalf of 12 individuals and a group of 100 prisoners. He also sought follow-up information on two previous cases, involving 53 individuals, and retransmitted a number of previously transmitted allegations to which he had not yet received a reply. The Special Rapporteur further transmitted two urgent appeals on behalf of the same four individuals. One appeal also raised the case of a group of 250 farmers.

92. The Government replied to 14 cases, some of them collective, involving 99 individuals, all transmitted in previous years.

Observations

93. The Special Rapporteur again expresses his appreciation for the substantial efforts the Government has undertaken in order to respond to the numerous allegations he has transmitted. He notes that in no case has a police or security official been convicted and sentenced for torture. He detects a willingness of the agencies of the administration of justice to place too heavy a burden on the alleged victims pursuing their investigations, thus implying a great willingness to close cases. The few cases of disciplinary action, involving reduction of salary or transfer to another police station, hardly suggest a serious commitment of the institution to redress grave abuses of prisoners. His concerns as addressed last year have not abated (E/CN.4/1997/7, para. 73). Preliminary contacts with the Permanent Mission encourage him to hope that the Government will respond positively to his request for an invitation to visit the country in the coming year.

Equatorial Guinea

94. The Special Rapporteur sent the Government four urgent appeals, to one of which the Government replied.

Observations

95. The Special Rapporteur notes that the Special Rapporteur on the human rights situation in Equatorial Guinea observed in his last report "that cases of torture and ill-treatment of prisoners continue to occur, although the number of complaints received is considerably lower than in previous years" and that the "impunity of the perpetrators of human rights violations is continuing" (E/CN.4/1997/54, paras. 40 and 44).

Ethiopia

96. The Special Rapporteur transmitted to the Government eight individual cases, one of which had also been the object of an urgent appeal. In addition, he submitted four other urgent appeals, one on behalf of a group of some 200 individuals and three on behalf of some 20 members of the Oromo ethnic group. The Government replied to the appeal concerning the group of 200 individuals, to two appeals on the Oromo members and to another urgent appeal on behalf of a large number of persons which had been transmitted in 1996 in conjunction with the Special Rapporteur on extrajudicial, summary or arbitrary executions.

Observations

97. The consistency of allegations of torture, particularly as regards persons in the hands of the army and suspected of involvement with the Oromo Liberation Front, is a matter of concern to the Special Rapporteur. A thorough inquiry into the detention and interrogation practices of the army in its

counter-insurgency operations with a view to bringing such practices into line with international standards is the minimum measure that should be undertaken by the Government as a matter of urgency.

Georgia

98. In a letter of 5 February 1997, the Special Rapporteur informed the Government that he had received reports indicating that most persons detained for political reasons and some persons detained in ordinary criminal cases in Georgia were subjected to torture or other ill-treatment during detention and interrogation. Torture and ill-treatment were reportedly used to obtain "confessions" or extract other information from detainees. The methods of torture and ill-treatment reported included hanging upside down; scalding with hot water; extraction of fingernails or toenails; application of electric shocks; systematic beating, sometimes resulting in fractured bones or broken teeth; and issuing of threats that members of the detainee's family would be killed or tortured. Courts were said generally to refuse to exclude evidence, including "confessions", repudiated by defendants as having been obtained through torture, and to fail to investigate such claims of torture.

99. Conditions in prisons and detention centres in the country were reportedly abusive. Prisons were said to be severely overcrowded and unsanitary, with contagious diseases such as tuberculosis and dysentery widespread. Detainees also reportedly lacked adequate food and medical treatment.

100. The Special Rapporteur also transmitted allegations concerning seven persons.

Observations

101. The Special Rapporteur notes the concerns of the Committee against Torture as regards the "volume of complaints of torture, particularly related to the extraction of confessions ..., the failure to investigate claims of torture and to prosecute alleged offenders ... (and) to make proper provision for compensation, restitution and rehabilitation of victims of torture ... the grossly inadequate conditions in places of detention, including prisons ... (and) the alarming number of deaths in prison" (A/52/44, para. 120). He also stresses the Committee's recommendations, in particular, that proposing abolition of incommunicado detention. He also notes the similar concerns expressed by the Human Rights Committee (A/52/40, paras. 240-243) and its recommendations (paras. 253-255).

Germany

102. By letter dated 17 November 1997, the Special Rapporteur advised the Government that he had continued to receive allegations indicating that a number of persons had been subjected to disproportionate or unnecessary force while police officers were trying to restrain or arrest them, or to ill-treatment in police custody. Victims were said to include mostly foreigners, including asylum seekers, or members of ethnic minorities. Beating, kicking and punching were the most reported forms of ill-treatment. Criminal investigations were known to have been instituted, but their

promptness, thoroughness and impartiality had been questioned. Few officers were as a result said to have been prosecuted or sanctioned and compensation had in several cases reportedly not been accorded.

103. The Special Rapporteur also transmitted six individual cases. With respect to the cases previously transmitted, the Special Raporteur sent to the Government comments made by the source to the reply on three instances and requested follow-up information on another four.

Observations

104. The Special Rapporteur notes the concern of the Human Rights Committee "that there exist instances of ill-treatment of persons by the police, including foreigners and particularly members of the ethnic minorities and asylum seekers" (A/52/40, para. 181).

Greece

105. The Special Rapporteur transmitted allegations concerning two persons, to which the Government replied.

Guatemala

106. The Special Rapporteur transmitted three new cases of alleged torture to the Government and requested additional information on two other cases transmitted in 1996.

Haiti

107. In a letter of 9 June 1997, the Special Rapporteur advised the Government that he had received information indicating that, since their initial deployment in July 1995, the Police nationale d'Haïti had frequently treated individuals with excessive force during arrest and beaten them in police lock-ups, thus reflecting insufficient training and inadequate leadership. Only in a few cases had investigations been carried out and those responsible prosecuted and given appropriate sanctions, either at the administrative or the judicial level. It was also reported that the Police Nationale has not devoted sufficient resources to ensure that the Inspector General's office has the necessary personnel and equipment to conduct thorough investigations of police misconduct and to regularly visit police stations around the country, as required by law.

108. The Special Rapporteur also transmitted allegations concerning four cases.

Honduras

109. The Special Rapporteur transmitted two new cases to the Government. He also transmitted various others sent in previous years on which no reply had yet been received or on which he was requesting additional information. The Government replied to all of them.

Hungary

110. The Special Rapporteur transmitted to the Government information concerning one individual case.

India

111. By letter of 28 April 1997, the Special Rapporteur informed the Government that he had received reports indicating that the use of torture by police in Punjab was widespread. The methods of torture reported include beatings with fists, boots, lathis (long bamboo canes), pattas (leather straps with wooden handles), leather belts with metal buckles or rifle butts; being suspended by the wrists or ankles and beaten; kachcha fansi (suspension of the whole body from the wrists, which are tied behind the back); having the hands trodden upon or hammered; application of electric shocks; burning of the skin, sometimes with a hot iron rod; removing nails with pliers; cheera (forcing the hips apart, sometimes to 180 degrees and often repeatedly, for 30 minutes or more; and the roller method (a log of wood or ghotna (pestle for grinding spices) is rolled over the thighs or calves with one or more police officers standing upon it); and insertion of chili peppers into the rectum.

112. The Special Rapporteur transmitted new allegations concerning 16 persons, two of which the Government responded to, and forwarded additional information concerning a previously transmitted urgent appeal to which the Government had replied. The Special Rapporteur also made four urgent appeals, two of which concerned the same person, and one of which was collective.

Observations

113. The continuing concern expressed over the years by the Special Rapporteur about the extent and lethal nature of torture allegedly inflicted by the law enforcement authorities remains undiminished. He notes the concern expressed by the Human Rights Committee "about the incidence of custodial deaths, rape and torture" in the country (A/52/40, para. 438) and again notes his outstanding request for an invitation to visit the country, non-compliance with which was also a matter of concern for the Committee.

Indonesia

114. In a letter of 2 July 1997, the Special Rapporteur informed the Government that he had continued to receive reports alleging that the use of torture and other ill-treatment by police and military personnel was widespread. According to the information, persons detained for political reasons were frequently first held incommunicado and interrogated in military custody, where many incidents of torture allegedly occur, before being transferred to police custody. In a letter of 28 October 1997, the Government contested allegations of widespread torture, though acknowledging that ill-treatment can sometimes occur, especially where individuals resist arrest and thus cause themselves to be injured.

115. The Special Rapporteur also informed the Government of newly received allegations concerning 23 persons, 14 of whom were from East Timor, and supplied further information and questions regarding two previously

transmitted cases to which the Government had replied. Responses were received from the Government in each case, as well as on two other cases transmitted by the Rapporteur in 1996. In addition, the Special Rapporteur made 14 urgent appeals, 11 of which concerned East Timor, on behalf of 112 named individuals and two groups, 11 of which the Government replied to.

Observations

116. As the Special Rapporteur observed last year, he "appreciates the Government's responses in respect of the cases he transmits to it. Despite these responses, he believes that the persistence and consistency of the allegations he receives, justify continuing concern with the issue. In particular, he does not consider simple denials by law enforcement or security agencies of detention or ill-treatment during detention as conclusive".

117. He considers that the continuing unwillingness of the Government to invite him to visit Indonesia and East Timor could be construed as being aimed at avoiding direct and independent evaluation of the allegations and the official denials.

Iran (Islamic Republic of)

118. The Special Rapporteur transmitted three urgent appeals, two of them in conjunction with the Special Representative on the situation of human rights in the Islamic Republic of Iran, concerning four individuals and a group of several hundred persons.

Observations

119. The Special Rapporteur notes that, in his report to the General Assembly, the Special Representative of the situation of human rights in the Islamic Republic of Iran described himself as "deeply concerned at the continuing reports of the use of cruel, inhuman or degrading treatment or punishment in the Islamic Republic of Iran" (A/52/472, para. 31). He especially shares this concern in respect of continuing reported use of stoning and lashing for offences of a moral nature.

Iraq

Observations

120. Although he has not been in a position to transmit specific cases to the Government, the Special Rapporteur notes the "particular concern" of the Special Rapporteur on the situation of human rights in Iraq that "the practice of torture continue[s] to occur in Iraq (A/52/476, para. 56) and the "grave concern" of the Human Rights Committee about "reports from many sources concerning the high incidence of... torture and ill-treatment" (CCPR/C/79/Add.84, para. 8).

Israel

121. On 11 June 1997, the Special Rapporteur informed the Government that he had continued to receive information according to which a large number of

persons detained by the General Security Services (GSS) had been subjected to torture or other ill-treatment during interrogation. Many if not all of the reported methods of torture and other ill-treatment were said to be authorized under the Landau guidelines, which remain unpublicized, allowing for the use of "moderate physical pressure" under certain circumstances. These methods include: violent shaking; tying the victim in painful positions; forcing the victim to sit or stand in painful positions (shabeh); hooding, often with malodorous sacks; sleep deprivation; enforced squatting; exposure to loud music; and threats, including death threats.

122. The Special Rapporteur also transmitted to the Government six individual cases and made seven urgent appeals, on behalf of 31 individuals. He further retransmitted a number of allegations previously submitted to which no reply had been received. The Government replied to three urgent appeals and provided responses to five cases included in last year's report.

Observations

123. The Special Rapporteur appreciates the detailed responses received from the Government and acknowledges again the dreadful challenges posed by politically motivated terrorist activities. It is nevertheless clear that Israel has not found means compatible with international law to interrogate suspected terrorists. Nor, as indicated by the Tarabieh case mentioned in the addendum to this report (E/CN.4/1998/38/Add.1, para. 214), does he share the Government's confidence that the methods used are restricted to uses where a "terrible disaster" looms (id., para. ...). He notes the position of the Committee against Torture which concludes, consistently with his own observations last year, that the known methods of interrogation are "breaches of article 16 [prohibition of cruel, inhuman or degrading treatment or punishment] and also constitute torture as defined in article 1 of the Convention [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment]. This conclusion is particularly evident where such methods of interrogation are used in combination which appears to be the standard case". (A/52/44, para. 257).

Kenya

124. By letter of 17 February 1997, the Special Rapporteur advised the Government that he had continued to receive information concerning widespread instances of torture in Kenya. The methods of torture reported include: beatings, including kicking to the sides while the victim is lying on his or her back, beating on the soles of the feet or on the legs, beating all over the body, beating with a sharp-edged pole and "boxing" of the ears; being held in a hole which is progressively filled with water; exposure to cold; administration of burns; administration of electric shocks; confinement in the dark; forcing victims to maintain tiring postures; sexual abuse, including rape, tightening of a wire tied around the testicles, insertion of objects into the rectum, pricking of the genitals, and threats of rape to the victim or the victim's family; forced exercise; and prevention of access to the toilet.

125. Persons wishing to file a complaint against the police for ill-treatment were said be discouraged or refused permission by police to fill out the required form, which also has to be completed by a doctor. Even when such forms were completed, they were said to be frequently lost or removed from case files. Many victims reportedly did not complain because prior to their release they might have been threatened by police that they would be rearrested or face other adverse consequences if they did so.

126. The Special Rapporteur also received reports concerning some 50 persons from Western Province suspected of links with the alleged opposition guerilla groups February Eighteenth Movement (FEM) or the February Eighteenth Resistance Army (FERA), who were said to have been taken to an unknown detention centre between January and September 1995. Detainees were allegedly subjected to a variety of forms of torture, including many of those enumerated above. They were reportedly held in solitary confinement in a block of 36 rooms, some 300 metres from where the torture sessions took place. It was alleged that 12 or 13 officials dressed in suits would typically be present during torture sessions, with the torture carried out by four persons and the remaining officials observing and encouraging the torture. A number of detainees were said to have been inspected by a doctor, accompanied by three police officials, who appeared to be making a determination as to whether the prisoners were fit for further "interrogation". One prisoner was reportedly not tortured for a period of one week, after a doctor in his presence told police officials to let him rest. Most injured prisoners examined by a doctor were given only tablets of paracetamol for their injuries.

127. The Special Rapporteur informed the Government of newly received allegations concerning five persons. He also requested additional information regarding six previously transmitted cases, some of them collective, to which the Government had replied that investigations were under way. In addition, he retransmitted the remaining allegations to which no reply had been received. One urgent appeal was also transmitted to the Government, on behalf of an individual.

Observations

128. The Special Rapporteur remains concerned that the continuing flow of allegations indicates the existence of a problem deserving serious attention, albeit he acknowledges the firm decision of the Senior Resident Magistrate referred to in the case described in paragraph 228 of the addendum to this report. He draws attention to his outstanding request to visit the country.

Kuwait

129. The Special Rapporteur transmitted one urgent appeal on behalf of a group of foreign nationals to which the Government replied.

Malaysia

130. The Special Rapporteur transmitted one urgent appeal on behalf of a group of persons to which the Government replied.

Maldives

131. The Special Rapporteur transmitted two urgent appeals.

Mauritania

132. The Special Rapporteur transmitted to the Government an urgent appeal on behalf of five persons.

Mexico

133. The Special Rapporteur transmitted eight urgent appeals to the Government, one of which jointly with the Working Group on Enforced or Involuntary Disappearances. The Government provided information in connection with seven of them, as well as two cases transmitted in 1995 and 1996 respectively.

Observations

134. The report of the Special Rapporteur's mission to Mexico (E/CN.4/1998/38/Add.2) contains his conclusions and recommendations regarding the situation from the perspective of his mandate.

Myanmar

135. By letter dated 21 February 1997, the Special Rapporteur informed the Government that he had received reports indicating that the army (tatmadaw) had continued to use torture and ill-treatment against members of ethnic minorities in the Shan and Mon States and the Tanintharyi (Tenasserim) Division. Persons forced to perform portering duties for the army and villagers suspected of having links with armed opposition groups were said to be most vulnerable to such practices. Porters unable to carry their required loads of supplies and ammunition were allegedly often punished by such methods as repeated beatings with bamboo sticks or rifle butts and deprivation of food, water, rest and medical treatment.

136. The Special Rapporteur had also been informed that a number of persons who were forced to perform unpaid labour by the tatmadaw on construction projects had allegedly been subjected to ill-treatment, including by being held in chains and receiving inadequate food and medical care.

137. Furthermore, the Special Rapporteur advised the Government that he had received information according to which a number of persons had allegedly been beaten by the police during student demonstrations in Yangon in December 1996.

138. By its letter dated 25 April 1997, the Government stated generally, with respect to the student demonstrations in December 1996, that there had been no single incident leading to bloodshed. Concerning the general allegations of the treatment of porters by members of the armed forces, the Government informed the Special Rapporteur that the armed forces sometimes had to employ civilian labourers for transportation of supplies and equipment over difficult terrain in remote areas when launching operations against armed groups. The law provided for the hiring of civilian labourers to assist the armed forces

on active duty. Such recruitment was done after consultations with the local authorities and based on three criteria: the civilians had to be unemployed; physically fit to work as porters; and a reasonable amount of wages had to be fixed and agreed upon before recruiting. Civilian labourers thus recruited were never required to accompany the troops to the actual scene of battle, neither were they exposed to danger. The respective military unit had the responsibility of paying wages and transport charges and providing accommodation, food and medical coverage for the hired labourers. There also existed volunteer porters and professional porters who earned their living by offering their services as porters. The porters were treated well by the armed forces.

139. The Government further responded to general allegations transmitted in 1996, concerning abuses said to have been carried out by the Democratic Kayin Buddhist Army (DKBA), which was reported to receive logistical, tactical and other support from the tatmadaw (E/CN.4/1997/7, para. 146). The Government stated that the DKBA was the fighting unit of the Democratic Kayin Buddhist Organization (DKBO), which broke away from the armed terrorist group Kayin National Union (KNU) in 1994, due to dissatisfaction with the leadership. When the KNU launched a massive offensive against the DKBO in January 1995, during which hundreds of people, including civilians, were killed, the local inhabitants had requested assistance from the tatmadaw. The Government stated that, since the aspirations of the DKBO had revealed the sincerity of their wishes for peace and stability of the region and coincided with those of the Government, the tatmadaw had provided the necessary logistical support. While the DKBA launched its assault on the KNU headquarters, tatmadaw units secured the rear with the aim of protecting nearby villages from attack by KNU remnants. Armed clashes had broken out at times between the forces of the KNU and the DKBO. As the Government had not yet held any official peace talks with the DKBO, and as the DKBO had yet to return to the legal fold, the Myanmar authorities had no control over the DKBO. Neither could the authorities be held responsible for the activities of the DKBO.

140. The Special Rapporteur also transmitted to the Government six newly reported cases, two of them collective, on behalf of eight individuals and retransmitted a number of cases, submitted in 1995 and 1996, to which no reply had been received. In addition, he made two urgent appeals in conjunction with the Special Rapporteur on the situation of human rights in Myanmar on behalf of 15 individuals and some unnamed relatives of two of them. The Government replied to one newly reported individual case and 12 previously transmitted allegations concerning 39 individuals.

Observations

141. The Special Rapporteur appreciates the responses of the Government. Nevertheless, he notes the conclusions of the Special Rapporteur on the situation of human rights in Myanmar that "the practice of torture, portering and forced labour continue to occur in Myanmar, particularly in the context of development programmes and counter-insurgency operations in minority-dominated regions". (A/52/484, para. 147)

Namibia

142. The Special Rapporteur transmitted one urgent appeal to the Government on behalf of one individual and his family.

Nepal

143. In a letter of 20 June 1997, the Special Rapporteur informed the Government that he had continued to receive information according to which persons suspected of being members or sympathizers of the Communist Party of Nepal (Maoist) or its affiliate, the Samyukta Jana Morcha, were subjected to torture or other ill-treatment following arrest, especially in the mid-western region of Nepal. The methods of torture reported to be inflicted most frequently were beatings on the soles of the feet (falanga) and the application of rollers, usually in the form of a weighted bamboo cane, down the legs of the victim (belana). The latter method was said to cause muscle damage and/or renal failure.

144. He also transmitted allegations concerning 14 individuals and a number of unnamed persons.

145. On 27 March 1997, the Government replied to general allegations, as well as one collective case, transmitted in 1996. The former concerned the alleged ill-treatment of Maoist political activists in mid-western Nepal, reports of repeated beatings, beatings to the soles of the feet, the placing of nettles on the body and the use of rollers on the thighs, as well as alleged incommunicado detention for over 24 hours. The Government denied each of the allegations.

Observations

146. The consistency of allegations of torture and ill-treatment reaching the Special Rapporteur indicate a pressing need for the Government to ensure scrupulous investigations of the cases concerned and to put in place measures that will avoid law enforcement officials having a sense of impunity when they resort to criminal methods in the course of their work.

Niger

147. The Special Rapporteur transmitted to the Government reports concerning four individuals. Two were members of a group of demonstrators said to have been arrested in Niamey on 11 July 1996 then taken to the military camp at Ekrafane.

Nigeria

148. The Special Rapporteur transmitted seven urgent appeals, some of them collective, on behalf of 18 individuals. One urgent appeal was sent in conjunction with the Chairman of the Working Group on Arbitrary Detention on behalf of an individual case concerning which the Special Rapporteur had already transmitted an urgent appeal in 1996. Two urgent appeals on behalf of a group of journalists were transmitted in conjunction with the Special Rapporteur on the promotion and protection of the right to freedom of opinion

and expression. The Government acknowledged receipt of three urgent appeals and forwarded further information in relation to one appeal in particular.

Pakistan

149. By letter dated 17 November 1997, the Special Rapporteur advised the Government that he had continued to receive reports, covering the situation under successive governments until June 1997, on the widespread use of torture and other cruel, inhuman or degrading treatment or punishment in Pakistan. To some extent, torture would appear to have been facilitated by existing legislation and the occurrence of unlawful detention, but the problem of impunity and effective collusion of government officials with non-State actors was also reported to constitute an important contributory factor to its existence.

150. Torture, including rape, was often said to have been used by the police to intimidate, humiliate or punish people in custody. Many victims had reportedly died as a result, often without those allegedly responsible having been brought to justice. Prisoners were frequently reported to have been denied basic facilities, including medical treatment. Despite the announced partial ban on fetters of 1996, the use of bar fetters in prison was said to have continued in practice and a recommendation for their abolition by the Law Commission in June 1997 had reportedly not yet been acted on. Whipping, although in most cases understood as abrogated by the Abolition of the Punishment of Whipping Act of 1996, reportedly remained applicable for certain offences under Islamic law. The Zina Ordinance of 1979, which prescribes punishments considered cruel, inhuman and degrading under international law, was still applicable and could, due to its evidential requirements, expose female victims of rape to the risk of being charged with an unlawful sexual relationship. Rape by influential people was said to have been ignored by the police. Victims of torture had reportedly faced problems when trying to register complaints with the police who were often said to have refused assistance. Complicity, acquiescence and indifference of government officials in practice was further said to have been claimed, in particular, by female victims of domestic violence and ill-treatment in the context of bonded labour and tribal retribution.

151. The Special Rapporteur further requested the Government, by letter dated 18 September 1997, to provide him with information on any steps taken to implement the recommendations in his 1996 mission report on Pakistan (E/CN.4/1997/7/Add.2). In his letter of 17 November 1997, he recalled the Government's attention to this request. He expressed particular concern about reports that bar fetters and similar instruments of restraint continued to be used and requested to receive information on the measures which had been taken to terminate their use, referring, inter alia, to assurances by the Interim Government that it had ordered an end to the use of fetters in prison.

152. The Special Rapporteur also transmitted allegations of five cases, some of them collective, on behalf of seven individuals and a group of unnamed persons. He transmitted updated information on one previously submitted individual case and made one urgent appeal on behalf of one individual. Furthermore, the Special Rapporteur retransmitted allegations transmitted in 1994, 1995 and 1996 to which no reply had been received.

Observations

153. While aware that many of the outstanding cases occurred before the present Government was elected, he notes that the State remains responsible for investigating earlier cases and bringing to justice those identified to have been responsible for acts of torture. He is disturbed to learn that despite the assurances he had received, fetters may still be being used as a form of punishment in jails. He is also aware of resistance to bringing prison rules into line with the Abolition of the Punishment of Whipping Act and with the Law Commission's recommendation that the use of fetters as a punishment be abolished. In general, he would urge the Government to supply information on the follow-up that may have been given to the recommendations contained in the report of his mission.

Peru

154. By letter dated 26 May 1997 the Special Rapporteur advised the Government that he had received information that torture continued to be widely practised in the country, both against those suspected of common criminal offences and against those suspected of offences of a political nature, and not only in the zones under a state of emergency. In particular, this was alleged to be done in the towns and cities by units of the anti-terrorist police (DINCOTE), and in the rural areas by the armed forces having control over the zone because of the state of emergency. Various aspects of the anti-terrorist legislation would appear to contribute to this situation. They include the period of time said to be available to the police to interrogate suspects and bring charges, which would seem to be almost unlimited. During their inquiries the police can hold someone in custody for up to 15 days and, if they decide that the proper completion of the investigation so requires, they can extend this period indefinitely. Moreover, the type of evidence most commonly presented by the police against persons suspected of terrorist offences was statements by these or other suspects, often unsupported and even contradicted by other evidence.

155. It was reported that prison conditions were particularly bad for persons serving a sentence under the anti-terrorist legislation. These prisoners were usually kept in solitary confinement for the first year of their sentence, were allowed to leave their cell for only 30 minutes a day and to receive visits only from their lawyers. Only after the first year were they allowed visits from relatives (30 minutes a month for adults and once every three months for children).

156. In the same letter the Special Rapporteur transmitted to the Government 22 new cases, some of them collective cases, and again transmitted others sent in 1996 on which no reply had been received from the Government. The Government replied to some of the new cases and to some of those transmitted in previous years. The Special Rapporteur also made an urgent appeal on behalf of two persons, to which the Government replied.

Observations

157. The Special Rapporteur appreciates the responses from the Government. He continues to believe that his observations of last year remain applicable (E/CN.4/1997/7, paras. 157-158).

Republic of Korea

158. By letter dated 11 June 1997, the Special Rapporteur advised the Government that he had received information indicating that the use of sleep deprivation and threats against detainees undergoing interrogation by police in the Republic of Korea were routine. Some detainees were also allegedly subjected to beatings. Because detainees were not always permitted to see lawyers prior to or during interrogation and because the families of detainees were not always informed of the place of detention, many detained persons were said to have been held in what amounts to prolonged incommunicado detention, a condition which facilitates torture and other ill-treatment. Detainees were allegedly unable to gain prompt access to a judge under the criminal procedure law in force, as such access was said to be determined upon written application by the prosecution or on the initiative of the judge. According to information received at the time, suspects may be detained for up to 30 days prior to indictment or for up to 50 days in the cases of persons first detained for some offences under the National Security Law. Courts were said often to fail to inquire into allegations by defendants that their "confessions" had been obtained while undergoing interrogation under torture or other ill-treatment and such "confessions" were frequently admitted as evidence at trial.

159. In response to these allegations, the Government denied in its letter of 15 September 1997 that torture and other forms of ill-treatment were committed during interrogation. It stated that both the Constitution and the Criminal Code prohibit torture and inhumane treatment and that the revised Penal Procedure Code of 1995 obligated the prosecutor to inspect regularly detention facilities of police stations and confinement areas of any investigating bureau. The Constitution and Penal Procedure Code also provided that the defence counsel or family of a suspect or accused under arrest or detention had to be notified without delay regarding the charges and the reasons for, the time and the place of the arrest or detention. Under no circumstances could contact with family or counsel be denied. With respect to the detention periods, the Government stated that the maximum detention period for a general crime was 30 days. The maximum detention period at a police station and public prosecutor's office was 10 days at each place respectively. The detention period at a public prosecutor's office could be extended an additional 10 days with the approval of a judge. For some offences under the National Security Law requiring long-term, specialized investigations and information-gathering procedures, the maximum detention period could be extended to 50 days with a judge's permission. The Government further stated that the Constitution and the Penal Procedure Code both stipulate that confessions likely to have been extracted involuntarily due to torture, for example, could not be admitted as evidence of guilt. Any person who had suffered torture or inhumane treatment could file a complaint with the judicial authorities and if it related to the scope of duty of a public official, demand compensation from the State. This said, the Government added

that some defendants make false claims of torture and ill-treatment in order to avoid criminal punishment, but the validity of such claims would be fully investigated.

160. The Special Rapporteur also transmitted one newly reported individual case. With respect to two previously transmitted cases the Special Rapporteur sent to the Government comments made by the source to the Government's reply. The Government replied to the newly transmitted individual case, to a collective case transmitted in 1996 and to the comments by the source concerning two previously transmitted cases.

Romania

161. The Special Rapporteur transmitted to the Government new allegations concerning 20 persons. He also retransmitted general allegations regarding ill-treatment on police premises, and the manner in which investigations are conducted (E/CN.4/1997/7, paras. 166-167), as well as 10 individual cases transmitted in 1995 and 1996, to which no reply had been received.

Observations

162. The Special Rapporteur regrets the absence of responses to numerous cases over the year.

Russian Federation

163. By letter dated 17 November 1997, the Special Rapporteur informed the Government that he had continued to receive allegations concerning the use of torture and other forms of ill-treatment in the Russian Federation. Several allegations concerned cases of persons alleged to have been tortured or ill-treated in the context of the conflict in the Chechen Republic. Other reports alleged resort to torture and ill-treatment by the police, particularly during pre-trial detention. Torture was mainly reported to occur immediately after arrest or during interrogation to intimidate detainees or to extract confessions. But also after being tried, detainees were still said to be at risk of torture and ill-treatment in prison, sometimes allegedly by fellow prisoners in collusion with the prison authorities.

164. Torture methods most commonly reported included beatings, electric shocks, asphyxiation (slonik) and particularly painful methods of physical restraint (konvert and lastochka). The slonik method was said to consist of the wearing of a gas mask with the oxygen supply cut off. For the konvert method the person was reportedly secured in a position with the legs pulled up to the head. The lastochka method was said to entail the handcuffing of the hands behind the back but above the level of the head, as a result of which the back was arched in a painful position. Furthermore, detention conditions were reportedly still characterized by overcrowding and unsatisfactory sanitation and medical care, amounting to ill-treatment. Generally, members of ethnic minorities were alleged to be at particular risk of ill-treatment. Some asylum-seekers had allegedly been subjected to refoulement. Use of torture and ill-treatment by the police had further been reported to be systematic in certain areas, including Mordovia and the regions of Magadan and Bryansk.

165. Torture and ill-treatment had also been reported to occur on a wide scale within the armed forces, where senior soldiers and commanding officers were often alleged to mistreat young recruits without the authorities taking appropriate remedial measures. Besides the soldiers' poor living conditions, reports had emphasized the continuing occurrence of torture methods such as withholding food, rape, beatings and other humiliating and degrading punishments.

166. The information received suggested that prompt, effective and impartial investigations had often not been carried out by the authorities, with the result that those responsible were rarely said to be prosecuted. Where perpetrators had been sentenced, penalties had in several cases been considered comparatively light. To some extent existing legislation, allowing, inter alia, for prolonged pre-trial detention, was still said to create favourable conditions for the occurrence of torture and ill-treatment.

167. The Special Rapporteur also transmitted to the Government 28 cases, some of them collective, on behalf of 43 identified individuals, a group of four unnamed persons and a number of unnamed prisoners and soldiers. He further sought follow-up information regarding the developments in a number of cases submitted in 1995 to which replies had been received. In addition, the Special Rapporteur retransmitted two cases to which no reply had been received. The Government replied to a number of cases transmitted in 1996.

Follow-up to the recommendations made by the Special Rapporteur subsequent to his visit to the Russian Federation

168. The Special Rapporteur visited the Russian Federation from 17 to 28 July 1994. His report on that mission is contained in document E/CN.4/1995/34/Add.1. During 1995 and 1996, the Government had informed the Special Rapporteur of measures that had been or were to be taken pursuant to the recommendations in his report (see E/CN.4/1996/35, paras. 142-148 and E/CN.4/1997/7, paras. 172-175). During the present reporting period, the Government continued to inform the Special Rapporteur about such measures. Thus, it reported that, on 14 June 1997, the President of the Russian Federation issued decree No. 593 concerning the repeal of certain presidential decisions and transmitted a copy of the decree. In particular, the decree provided, in connection with the adoption of the new Criminal Code, for the repeal of presidential decree No. 1226 of 14 June 1994 under which the law enforcement agencies were authorized to apprehend and hold citizens under arrest for a period of up to 30 days on suspicion of having committed a serious crime, without bringing charges, without any preventive measures having been decreed and in the absence of a judicial warrant.

169. On 3 September 1997, the Government advised the Special Rapporteur that, on 8 July 1997, the Government had adopted decision No. 833 on the establishment of minimum standards of nutrition and living conditions for persons sentenced to deprivation of liberty. The purpose of the decision was to improve the conditions of detention of prisoners in conformity with the Standard Minimum Rules for the Treatment of prisoners.

Observations

170. The Special Rapporteur continues to appreciate the information provided by the Government, both by way of follow-up to his 1994 mission and as regards individual cases. He also notes the concern of the Committee against Torture which is consistent with the information before him (A/52/44, para. 42). He welcomes the establishment of minimum standards of nutrition and living conditions for persons sentenced to deprivation of liberty. He notes, however, that in the past existing standards in the same fields had remained unimplemented, because of the lack of resources allocated to the administration of places of deprivation of liberty. He also remains particularly concerned about the more acute problem of torturous conditions of detention in pre-trial detention centres (SIZOs), which appear to persist on a widespread scale despite concrete recommendations he made in the report of his visit to alleviate the problem. As far as investigations of allegations of ill-treatment of persons under interrogation are concerned, he believes that national and international misgivings about the effectiveness of such investigations will continue as long as the procuracy remains responsible for both prosecution of ordinary criminal suspects and investigation of abuses committed by law enforcement officials.

Rwanda

171. The Special Rapporteur transmitted to the Government two urgent appeals, one in conjunction with the Chairman-Rapporteur of the Working Group on Arbitrary Detention, the other in conjunction with the Special Rapporteurs on the situation of human rights in Rwanda, on extrajudicial, summary or arbitrary executions, and on the independence of judges and lawyers. The latter concerned the way cases against persons accused of genocide were said to be conducted.

Senegal

172. In a letter dated 10 July 1997, the Government sent the Special Rapporteur background information on recent developments to do with the protection of human rights in Senegal. On the subject of torture, the Government stated that it had recognized the competence of the Committee against Torture to consider communications from individuals on 30 August 1996, that there were plans to allow counsel to be present during detention in custody, that the National Assembly had passed a law defining and explicitly making a criminal offence under the Criminal Code of any act of torture, and that fresh instructions had been issued to the Ministry of Justice, the armed forces and all law enforcement authorities to track down and prosecute violations of human rights and bring the perpetrators to justice.

173. The Special Rapporteur also received a reply from the Government concerning five cases, one of them involving several individuals, transmitted to it in 1996, and one case transmitted in 1994.

Spain

174. On 24 January 1997 the Special Rapporteur transmitted complaints about a new case to the Government, and the Government replied. On 26 May 1997 the

Rapporteur transmitted four further cases, as well as additional information with regard to the one transmitted in January. On 4 August 1997 the Government replied with regard to the five cases.

Observations

175. The information before the Special Rapporteur is consistent with that before the Committee against Torture which continued to receive regular reports of torture and ill-treatment, observing that in spite of legal restrictions on their use, extended periods of incommunicado detention, during which the detainee cannot rely on the assistance of a lawyer of his choice, seem to facilitate the practice of torture (see CAT/C/314). The Special Rapporteur is aware of the difficulties of combating terrorist activities and the possibility that in such situations false, as well as true, but unprovable, allegations of torture may be made. He recommends that the Government give serious consideration to the possibility of introducing a system of video recording of interrogations. This could help substantially not only to protect prisoners from abuse, but also to protect law enforcement officials from false accusations.

Sri Lanka

176. The Special Rapporteur transmitted allegations concerning three individual cases.

Sudan

177. The Special Rapporteur transmitted eight urgent appeals to the Government, all in conjunction with the Special Rapporteur on the situation of human rights in the Sudan. Two appeals were made on behalf of individual cases. The other six appeals were collective on behalf of a total number of 163 named individuals and one group of 775 unidentified children, reportedly held at Al Huda camp at Abu Dum, a facility for street children.

178. In addition, the Special Rapporteur transmitted to the Government a letter on behalf of a group of some 50 women in conjunction with the Special Rapporteurs on the situation of human rights in the Sudan, on violence against women, and on the promotion and protection of the right to freedom of opinion and expression.

179. The Government responded to one individual urgent appeal, three collective urgent appeals on behalf of 74 persons, as well as to the collective appeal on behalf of the group of children. The Government also provided replies to 19 cases concerning 46 individuals which had been transmitted in previous years.

Observations

180. The Special Rapporteur notes the view of the Human Rights Committee which stated that it was troubled by the number of reports of torture in the Sudan (CCPR/C/79/Add.85, para. 12). While appreciating the Government's replies to information he has transmitted, he is constrained to express his shock at the incident of 1 December 1997 which evidenced unprovoked and

unrestrained brutality by the law enforcement officials involved, as well as at the allegations of judicial complicity in and aggravation of the cruelty of the events. He also believes that the incident must be regarded as a calculated defiance of the United Nations and its continuing concern to promote respect for human rights in the Sudan.

Swaziland

181. The Special Rapporteur made one urgent appeal on behalf of one individual, to which the Government replied.

Sweden

182. The Special Rapporteur made one urgent appeal on behalf of one asylum seeker.

Switzerland

183. The Special Rapporteur, in conjunction with the Special Rapporteur on the independence of judges and lawyers, transmitted allegations concerning one person, to which the Government responded on two occasions. The Government also sent replies to two cases transmitted in 1996, concerning three individuals.

Observations

184. The Special Rapporteur appreciates the detailed responses of the Government. The facts in the Nwankavo case, where there was overwhelming evidence of abuse leading finally to some welcome disciplinary action against the law enforcement officials involved, suggest a judicial disposition precipitately and prematurely to believe the police and to disbelieve the foreign accused/complainant, as well as a reluctance fully to rectify the original wrong. He notes the concern of the Human Rights Committee "at the numerous allegations of ill-treatment in the course of arrests or police custody, particularly in respect of foreign nationals or Swiss citizens of foreign origin and ... reports on the failure of the authorities to follow up complaints of ill-treatment by the police and the disproportionate nature, if not absence, of penalties" (A/52/40, para. 98). The Committee against Torture has expressed similar concerns (see CAT/C/308).

Syrian Arab Republic

185. The Special Rapporteur transmitted two urgent appeals on behalf of two individuals. The Government replied to one of the appeals.

Tunisia

186. The Special Rapporteur transmitted to the Government an urgent appeal on behalf of two people, and received a reply from the Government. He also had replies from the Government concerning two cases submitted in 1996.

Turkey

187. By letter of 21 May 1997, the Special Rapporteur advised the Government that he had continued to receive information concerning the widespread use of torture in Turkey, including that inflicted upon a significant number of children. According to the information, torture was practised against most persons interrogated by the Anti-Terror Branch of the police and the gendarmerie, as well as against many persons detained by the police in ordinary criminal cases. Torture was reportedly administered to extract "confessions", to obtain information, to intimidate detainees into becoming police informants, or as informal or summary punishment for petty offences or suspected sympathy for illegal organizations.

188. The following methods of torture were said to be common and often employed in concert with each other: administration of electric shocks; hanging by the arms in a variety of positions, including with the arms behind the back ("Palestinian hanging"); spraying with high-pressure water; sexual abuse, include squeezing of the testicles or breasts; beatings with fists, night sticks or sandbags; blindfolding; being stripped naked; and being exposed to extreme temperatures. Much of the most severe torture was said to occur in the early days of detention, so that by the time a detainee appeared in court or underwent a physical examination, there would remain little or no physical evidence that torture had taken place.

189. The Government informed the Special Rapporteur of a law on the protection of persons in detention adopted on 6 March 1997. The stated aim of the law is to reduce maximum periods of detention to a level compatible with European and international standards. In the case of ordinary crimes, it requires a detainee to be brought before a magistrate within 24 hours of arrest, and if the public prosecutor wishes to prolong the detention in order to conclude investigations, he must obtain the consent of the magistrate. For crimes falling within the jurisdiction of the State Security Courts, the period within which the suspect must be brought before a judge is 48 hours, but the public prosecutor may order this to be prolonged for up to four days if there are difficulties in collecting evidence, or for other similar reasons. Any further extension may only be obtained with the permission of the judge, up to a maximum of seven days, with the exception of regions under the state of emergency, where the judge may extend the period up to 10 days. Other provisions of the law include limitation of the jurisdiction of the State Security Court to crimes against the integrity and authority of the State, and the right of the detainee to see a lawyer at any time. The judge may choose to withold information from the detainee where he thinks it "appropriate", at least until a public case is begun, and the judge or a substitute may also be present during the meeting with the lawyer if required by the cause of arrest. It was also reported that emphasis would be placed on the practical implementation of this law, that a committee would be established to monitor its implementation, and that instructions had been given to governors and provincial police directorates to prevent ill-treatment of suspects.

190. The Government also provided the Special Rapporteur with some information about alleged activities of the Kurdish Workers Party (PKK), as presented in an article from the Observer newspaper of 28 September 1997.

191. The Special Rapporteur transmitted to the Government new allegations concerning 7 individuals and 3 groups of 12, 6 and 35 persons respectively. Replies were received to five of these cases as well as to four cases transmitted in 1996. The Special Rapporteur also sought follow-up information on developments in investigations and judicial proceedings in a number of cases transmitted in 1996 to which the Government had replied. Three of these concerned individuals, and three were collective, arising out of disturbances at a number of prisons in two cases, and the arrest of a group of students in the third. Finally, he retransmitted allegations first sent in 1995 and 1996, concerning six persons, to which no reply had been received.

192. The Special Rapporteur made five urgent appeals, all collective, on behalf of 68 persons. He received replies to three of the appeals. The Government also replied to two collective urgent appeals made in 1996.

Observations

193. The Special Rapporteur appreciates the responses of the Government and welcomes the bringing of safeguards into line with international standards, though it is doubtful that, in cases where the law provides for a four-day delay before a detained person is brought before a magistrate, the relevant international standards are met. He also welcomes the Government's invitation to him to visit the country in the last quarter of 1998. While indicating willingness to visit the country sooner, he has accepted the invitation.

Ukraine

194. The Special Rapporteur transmitted one urgent appeal on behalf of one person and received a reply from the Government.

Observations

195. The Special Rapporteur appreciates the response of the Government. He also notes that the Committee against Torture has expressed concern "about the large number of reports by non-governmental organizations of cases of torture and violence committed by officials during preliminary investigations, causing suffering, bodily injury and, in a number of cases, death" (A/52/44, para. 131).

United Kingdom of Great Britain and Northern Ireland

196. The Special Rapporteur transmitted allegations concerning two persons, to which he received a reply.

United Republic of Tanzania

197. The Special Rapporteur transmitted to the Government the medical reports relating to an individual case included in last year's report, on which the Government submitted its observations.

United States of America

198. By letter dated 17 November 1997, the Special Rapporteur informed the Government that he had received reports addressing in particular allegations of the use of excessive force by police officers in the New York City Police Department (NYPD) and the ill-treatment of inmates in prisons.

199. Excessive physical force by police officers in the NYPD had allegedly been used in the course of arrests, disputes in public places and sometimes in police custody. Repeated kicking and punching with fists, batons or other objects were the most frequently reported forms of ill-treatment. Sometimes, force was said to have been used after the suspect had already been handcuffed or otherwise restrained. In some cases, suspects were said to have died after police officers had forcibly restrained them. Practices of applying pressure to the chest or neck, or placing suspects face-down in restraints with resulting restrictions on respiratory movement may have led to asphyxia and were in some cases said to have been fatal. Victims were said to come from various backgrounds although many were alleged to be members of racial minorities.

200. Regarding the ill-treatment of inmates in prisons, concerns had been expressed that the reintroduction of chain gangs in the States of Alabama, Arizona, Florida and others might constitute a form of cruel, inhuman or degrading treatment or punishment. Prisoners in chain gangs were reportedly required to perform heavy manual labour, such as rock-breaking or clearing rubbish from the highway, while shackled together (or with their own legs chained together) with metal chains, exposed to the public. In Alabama, for example, prisoners attached to chain gangs were said to have to work 10-12 hours a day dressed in work suits imprinted with the words "Alabama chain gang". The chain gangs were said to be guarded by armed officers and dogs. Prisoners reportedly had to remain chained when using toilet facilities. Apparently, efforts had been undertaken to prohibit the practice in Alabama, but the outcome was not known to the Special Rapporteur. Reports concerning Alabama had further alleged the practice of handcuffing prisoners to a hitching rail in the hot sun as punishment for refusal to work, causing numbness, dizziness and pain.

201. Allegations had also been received concerning the abusive use of electro-shock stun belts and stun guns. According to the information received, stun devices, which incapacitate an inmate by transmitting electric shocks, can reportedly cause high levels of pain and may result in serious injuries, possibly even death in certain circumstances. Prolonged or repeated application of stun devices is allegedly not sufficiently prevented by their technological design. Reportedly, the devices may also have indiscriminate effects in that people in contact with the target can receive shocks as well. Although some States, including New York, Illinois and New Jersey, as well as Washington D.C., had reportedly banned the use of stun weapons for law enforcement and correctional purposes, they were still said to be used in several other States. Remote-controlled electro-shock stun belts had reportedly been introduced by a decision of the Federal Bureau of Prisons in 1994 to prevent high-risk inmates from escaping during transportation and court appearances. Although the exact medical effects of the stun belt were reportedly still unknown, its use was said to have been promoted as an

alternative to shackles or leg-irons. Activation of the belt reportedly transmits a 50,000-volt shock to the left kidney, through blood vessels and nerves for eight seconds, causing severe pain, instant immobilization, and possibly involuntary defecation and urination. Stun belts had allegedly already been used as instruments of restraint during judicial hearings in violation of the Standard Minimum Rules for the Treatment of Prisoners which prohibit the use of restraints on prisoners when appearing before a judicial authority. Furthermore, serious concerns had been expressed as to the nature of such belts as a device designed to humiliate and degrade.

202. The Special Rapporteur also transmitted 12 individual cases to the Government. He further retransmitted the allegations sent in 1995 concerning which the Government had provided a general reply but had stated at the same time that they would be forwarded to the appropriate authorities for additional information, which had not yet been received by the Special Rapporteur.

Observations

203. The Special Rapporteur is concerned at the use of practices such as chain gangs, of instruments of restraint in court and of stun belts and stun guns, some of which can only be intended to be afflictive and degrading, others of which have the same effect. He urges the Government to use all means, including judicial ones, to review the compatibility of such measures with the affected persons' civil rights.

Venezuela

204. In a letter dated 26 May 1997 the Special Rapporteur transmitted complaints about three new cases to the Government. In addition, he again transmitted a number of cases sent in 1996 on which no reply had yet been received. The Special Rapporteur also transmitted an urgent appeal on behalf of one person. The Government provided information on three cases sent by the Special Rapporteur in 1996.

205. In a letter dated 17 September 1997 the Special Rapporteur reminded the Government of the recommendations included in his report on his visit to the country in June 1996 (E/CN.4/1997/7/Add.3), and requested information on measures taken by the Government to put those recommendations into practice.

Observations

206. The Government informed the Special Rapporteur that on 15 October 1997 the Supreme Court of Justice declared the Vagrants Act null and void. The Special Rapporteur regrets that he has not received any information from the Government on any follow-up given to the recommendations contained in the report of his 1996 visit to the country.

Yemen

207. By letter dated 9 June 1997, the Special Rapporteur advised the Government that he had received information indicating that persons detained for political reasons, particularly those arrested by the Political Security

Branch of the security forces, were often held incommunicado for prolonged periods, sometimes weeks or months, without access to lawyers and family members. Torture was said to be inflicted systematically against such detainees. Military intelligence, criminal investigation police and members of the armed forces also allegedly used torture on a widespread basis, against both political suspects and common law detainees. Officials carrying out torture were said usually to act with impunity, as few investigations of such officials had reportedly been carried out.

208. The methods of torture reported included: beatings all over the body, including with rifle butts, iron rods, cables and sticks; sexual assault, including rape; threat of rape of the victim or his or her relatives in his or her presence; application of electric shocks; suspension from a metal bar inserted between the hands and knees which are tied together ("Kentucky Farrui"); being urinated on; being walked on while lying naked on slabs of concrete; prolonged solitary confinement; shackling for lengthy periods; burning with cigarettes; beatings on the soles of the feat (falaqa); dousing with cold water; suspension, sometimes upside down, from the ceiling or window while simultaneously being subjected to other forms of torture; whipping and lashing; sleep deprivation; being kept in adverse weather conditions; being tied to a chair or bound with ropes while being subjected to other forms of torture; and forced head shaving.

209. Members of the security forces were also said to carry out abductions and beatings of political opposition figures as reprisal for their political activities and/or to dissuade them from engaging in such activities in the future.

210. The Special Rapporteur also informed the Government that he had received information concerning the application of corporal punishment in Yemen. Under the Penal Code enacted in 1994, fornication, when the offender is unmarried, is punishable by 100 lashes and adultery is punishable by death by stoning (articles 263 and 264). Consumption of alcohol and slander are punishable by 80 lashes (articles 283 and 289). Amputation of the right hand is prescribed for a first theft offence and amputation of the left foot at the ankle for a subsequent offence (article 298). Highway robbery is punishable by amputation of the right hand and left foot (article 307 (2)).

211. Flogging was said to be carried out on a regular basis. Defendants were reportedly often flogged immediately upon trial without appeal to higher courts, as such defendants are generally released after the flogging, whereas they might spend lengthy periods in detention during any appeal process they might pursue. Judges were said to face threats or other pressure from security forces to convict defendants in corporal punishment cases.

212. The Special Rapporteur also transmitted five cases, several of them collective, concerning 7 named, 18 unnamed individuals, and the detainees in Si'un prison. Furthermore, he made three urgent appeals on behalf of 11 named and 28 unnamed individuals. The Government responded to one urgent appeal on behalf of two individuals sentenced to corporal punishment.

Observations

213. The allegations received should be the subject of independent and impartial investigation. The Special Rapporteur would be grateful to receive the details and results of such investigations. As far as the imposition of corporal punishment is concerned, he notes that the Government's invocation of judicial independence in the application of Shari'a (E/CN.4/1998/38/Add.1, para. 479) does not relieve the State of Yemen from its obligation under international law to prevent the infliction of cruel, inhuman and degrading punishment.

Yugoslavia

214. By letter dated 9 June 1997, the Special Rapporteur advised the Government that he had received information indicating that police personnel in many areas of the Republic frequently resorted to the use of force for the purpose of obtaining information or "confessions" or as a means of informal punishment. The methods of ill-treatment and torture reported included beatings with fists, police clubs, or other wooden or metal clubs; striking the victim's head against the wall, floor or automobile; and application of electric shocks. Beatings were said to be applied typically to the head and sensitive parts of the body, such as the soles of the feet and kidney areas. Police inflicting beatings allegedly often placed bullet-proof vests upon victims, so as to reduce the visible evidence of physical injury.

215. Law enforcement officers allegedly often threatened victims of abuse to dissuade them from filing complaints about their treatment or to prompt them to drop charges once they were filed. In some instances, police had reportedly initiated proceedings against victims in reprisal for charges filed against police personnel. In addition, the public prosecutors' offices were said frequently to fail to take action on criminal complaints against police officers and to fail to give notice of dismissal of complaints or to meet time limits for initiating action on the complaints. When proceedings did take place involving charged police officers, the presence of the accused officers in court was said to be often impossible to secure, as the court may only request that the accused officer's superiors secure their presence. Judicial officials allegedly often failed to act independently, by accepting police officers' accounts at face value, while questioning extensively the alleged victim. Guilty verdicts against police officers were said almost always to result in suspended sentences.

216. The Special Rapporteur also transmitted 10 cases, one of them collective, on behalf of 11 individuals, as well as two urgent appeals on behalf of two groups of demonstrators. One group concerned 350 individuals. The Government replied to 9 cases on behalf of 10 individuals.

Observations

217. The Special Rapporteur appreciates the responses of the Government. However, several of those responses are consistent with the allegations of the reluctance of public prosecutors to pursue charges against accused law enforcement officials. They also confirm the applicability of short time limits for the bringing of charges. Such limits are particularly

inappropriate for crimes such as torture or similar ill-treatment perpetrated by public officials. He notes the finding of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia who also "continues to receive reports of torture and ill-treatment from various parts of the country" and who emphasizes "her concern about the question of impunity, which, unless addressed by the Government, will continue to facilitate further acts of torture" (A/52/490, para. 159).

Zambia

218. The Special Rapporteur transmitted one urgent appeal to the Government on behalf of seven individuals and a number of unnamed persons.

Other communications: information transmitted to the Palestinian Authority

219. The Special Rapporteur made one urgent appeal on behalf of one individual.

IV. CONCLUSIONS AND RECOMMENDATIONS

220. As he comes to the end of his first full term of office, the Special Rapporteur can only be disappointed at the high incidence of torture in many countries, while noting that it has substantially diminished in some, notably where United Nations field operations are in place pursuant to a peace agreement. How far the progress can be attributed to the field presence and how far to the ending of the conflict is difficult to assess. Both factors may be assumed to be making a contribution.

221. Regarding the continuing prevalence of the practice in so many countries, the Special Rapporteur notes that in the past he has focused most of his recommendations on measures that can be taken by the countries where the torture takes place (see E/CN.4/1995/34, para. 926). As he has pointed out, impunity of the perpetrators is at the heart of the problem, whether by leaving detainees at the unsupervised mercy of their captors and interrogators without access to the outside world (incommunicado detention), thus ensuring that evidence of the crime of torture will not emerge, or by other means of manipulating the criminal justice system so as to prevent torturers from being brought to justice. This may be done by passing laws aimed at relieving the perpetrators from criminal responsibility (amnesties, acts of indemnity and so on), that is, de jure impunity, or by procedural means of blocking the workings of justice, that is, de facto impunity.

222. In the light of recent developments, the Special Rapporteur deems it useful to address measures that can be taken by the international community to help end impunity for human rights crimes such as torture. Most topical is the process currently under way of drafting a statute for an International Criminal Court. This is a very positive development as the world approaches the twenty-first century.

223. It is expected that any such court would be able to try crimes against humanity. It is also expected that the statute will reflect (as is already the case as regards the statutes of the International Criminal Tribunals for

the Former Yugoslavia and for Rwanda) that crimes against humanity can occur whether or not committed in the course of armed conflict, international or national. It is further to be hoped that the threshold of application will not be unreasonably high. For instance, the scope of the practices may well be required to be systematic or widespread, but a prosecutor should not have to prove both elements. Moreover, individual incidents taking place in the context of the practice should be amenable to the proposed court's jurisdiction.

224. Indeed, as far as torture is concerned, it has effectively been legislated as a crime under international law by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whether or not committed within the context of a more generalized practice, and it would be desirable that it be included as an independent basis of the proposed court's jurisdiction. It is, of course, established as a crime against humanity provided the threshold elements are present.

225. In any event, it is assumed that in situations of armed conflict, the proposed court will be able to try individual cases of war crimes, including torture, whether committed as a grave breach of the four Geneva Conventions of 12 August 1949 in respect of international armed conflict or as a violation of the laws and customs of war as reflected in article 3 common to those Conventions.

226. For the proposed court to have international credibility and legitimacy, it will be essential for an international prosecutor to be able independently to initiate indictments of suspected perpetrators of crimes within the court's jurisdiction. If such indictments were left to the decision of a political body, such as the Security Council, this could not but call into question the impartiality of international justice. Clearly there is no reason why the Security Council should not have a comparable power of referring situations or cases to the prosecutor.

227. Accordingly, the Special Rapporteur believes that the creation of an International Criminal Court with the characteristics described would be a monumental step towards the realization of international justice, not least because it would, in principle, permit an organ of the international community to override de jure or de facto impunity at the national level.

228. In this connection, the Special Rapporteur is aware of suggestions according to which nationally granted amnesties could be introduced as a bar to the proposed courts' jurisdiction. He considers any such move subversive not just of the project at hand, but of international legality in general. It would gravely undermine the purpose of the proposed court, by permitting States to legislate their nationals out of the jurisdiction of the court. It would undermine international legality, because it is axiomatic that States may not invoke their own law to avoid their obligations under international law. Since international law requires States to penalize the types of crime contemplated in the draft statute of the court in general, and torture in particular, and to bring perpetrators to justice, the amnesties in question are, ipso facto, violations of the concerned States' obligations to bring violators to justice. Any such proposed move would be to turn things on their head, allowing national law to dictate international legal obligation.

229. The Special Rapporteur has no illusions that the proposed court will offer a panacea to problems of impunity at the national level. It will take time for the institution to come into existence and be applicable to all States. Nor can it be expected to have the resources to try all offenders. In many cases, the court will not have the suspects in its hands. It is therefore necessary to look to national criminal jurisdictions to play a major role in imposing justice. However, the national jurisdictions do not need to be territorial, that is, of the State where the crime was committed. Indeed, it is the failure of territorial jurisdiction that is the problem. In respect of the crimes under consideration, such as torture, universal jurisdiction is applicable, that is, jurisdiction exercised on the basis simply of custody.

230. As regards grave breaches of the Geneva Conventions of 12 August 1949 and acts of torture committed in a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, States are required to bring to justice any perpetrators they find within their jurisdiction, regardless of their nationality or that of their victim(s) or of where they committed the crime, if they do not extradite them to another country wishing to exercise jurisdiction.

231. In respect of other pertinent crimes under international law, States are in any event permitted to exercise such jurisdiction. The problem is that, all too often, they have not amended their national legislation to permit their law enforcement authorities and institutions for the administration of justice to act accordingly. This means that the perpetrators may escape justice completely. It is especially unfortunate when the State having custody of the individual can neither return the person to his or her country of origin for fear of the person's being tortured or otherwise persecuted, nor send him or her to another country because of similar fears.

232. The Special Rapporteur, therefore, urges all States to review their legislation with a view to ensuring that they can exercise criminal jurisdiction over any person in their hands suspected of torture or, indeed, of any crime falling within the notions of war crimes or crimes against humanity as understood above.

233. He would also hope that the United Nations programme of advisory services and technical assistance would have the capacity to provide States with any technical assistance they would need in developing appropriate legislative amendments to give effect to this recommendation.

234. Needless to say, neither an international criminal jurisdiction nor universal State jurisdiction is a wholly satisfactory solution to the problem of impunity. The Special Rapporteur can only reaffirm his view that States should refrain from granting or acquiescing in impunity for human rights crimes at the national level, such impunity itself constituting a violation of international law. The recommendations concerning international and universal jurisdiction could at least make a dent in that impunity, so that perpetrators may feel that, whatever protection they have in the countries where they have committed their crimes, they will have no safe haven elsewhere.